

EXHIBIT B

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JOHN D. KINARD - District Clerk
Galveston County, Texas
Envelope No. 5003852
By: Shailja Dixit
4/23/2015 12:09:03 PM

CAUSE NO. 15-CV-0405

LINDA GRAYSON,
Plaintiff,

v.

LEXINGTON INSURANCE CO.,
Defendant.

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IN THE DISTRICT COURT OF

GALVESTON COUNTY, TEXAS

Galveston County - 122nd District Court
____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, LINDA GRAYSON, Plaintiff in the above-styled cause, hereby complaining of LEXINGTON INSURANCE COMPANY, and for this cause of action would show the Court as follows:

I. NATURE OF LAWSUIT

1. This is an action by the Plaintiff who is insured by the Defendant to enforce the appraisal clause included in their insurance contract. Lightning struck Mrs. Grayson's house on Galveston Island in 2009 causing a fire which produced significant internal and external damage to the structure and its contents. Mrs. Grayson filed a claim under her insurance policy with Lexington. Lexington's inspector valued the cost of repair based on leaving the charred wooden interior in place, but sealed. Mrs. Grayson's contractor, however, believed that the entire interior would have to be replaced.

2. Lexington demanded appraisals in June 2010 and May 2012 pursuant to a provision in the insurance contract which governs disputes between the parties, however, the appraisals never took place. In November of 2014, Mrs. Grayson attempted to invoke the appraisal provision by notifying Lexington in writing in accordance with the contract provision. Subsequent emails and

calls to the company have gone unanswered and, to date, she has not received a response from Lexington regarding her demand.

II. DISCOVERY CONTROL PLAN

3. Plaintiff intends for discovery to be conducted under Level 1 of Rule 190 pursuant to the Texas Rules of Civil Procedure.

III. PARTIES

4. Plaintiff, Linda Grayson is an individual residing in St. Louis, Missouri and is represented by A. Craig Eiland, 2211 The Strand, Suite 201, Galveston, Texas 77550.

5. Defendant Lexington Insurance Company is a foreign insurance carrier, organized and existing under the laws of Delaware and authorized to conduct business in Texas, whose principal place of business is located at 99 High St, Floor 23, Boston, Massachusetts 02210-2378 and may be served with process by serving the Texas Commissioner of Insurance at 333 Guadalupe Street, Austin, Texas 78701 as its agent for service because defendant is required by Texas Insurance Code section 804.103(b) to appoint and maintain an agent for service of process but has not done so. Tex. Ins. Code §§ 804.103(c)(1), 982.001.

IV. JURISDICTION

6. The Court has jurisdiction over the parties and subject matter of this cause. A district court has subject matter jurisdiction to hear and determine any cause that is cognizable by courts of law or equity and may grant any relief that could be granted by either courts of law or equity. *See* Texas Const. Article V, § 8; Tex. Gov't. Code Ann. § 24.007-08. The Defendant regularly and systematically transacts business in the State of Texas and has the required minimum contacts giving this Court personal jurisdiction over the Defendant. Specifically:

7. The Court has personal jurisdiction over Defendant Lexington Insurance Company because this defendant is a domestic insurance company that engages in the business of insurance in the State of Texas, is licensed by the Texas Department of Insurance, and Plaintiff's cause of action arises out of this defendant's business activities in this state.

8. Venue is proper in Galveston County, Texas under Texas Civil Practice & Remedies Code § 15.032, because the insured properties are situated in Galveston County, Texas.

V. DECLARATORY JUDGMENT

9. A person interested under a contract may have determined any question of construction or validity under the contract and obtain a declaration of rights. Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a). A contract may be construed either before or after there has been a breach to determine a contractual party's rights. *Id.* at § 37.004(b). Appraisal clauses contained in insurance contracts are enforceable by either party regarding disputes over the "amount of loss" and are a condition precedent to filing a lawsuit for breach of an insurance contract. *State Farm Lloyds v. Johnson*, 290 S.W.3d 886, 894 (Tex. 2009). Accordingly, the Texas Supreme Court has recognized the right of an insured to compel an insurer's participation in the appraisal process pursuant to the insurance contract through the filing of a declaratory judgment action. *Id.* at 895.

10. Based on the foregoing facts, and pursuant to the policy of insurance in force and effect between Plaintiff and Defendant at the time of this incident, the Plaintiff seeks a declaratory judgment pursuant to the Texas Declaratory Judgment Act that she is entitled to compel Defendant to participate in the appraisal process.

VI. DAMAGES

11. Plaintiff is entitled to an award of court costs and reasonable and necessary attorney's fees as are equitable and just pursuant to the Texas Declaratory Judgment Act. Tex. Civ. Prac. & Rem. Code Ann. § 37.009.

VII. PRAYER

9. WHEREFORE, LINDA GRAYSON, Plaintiff, respectfully requests that Defendant be cited to appear and answer, and that on final trial on the merits, grant judgment in favor of Plaintiff. Plaintiff further requests to have and recover from the Defendant the following:

- a. Court Costs
- b. Reasonable and Necessary Attorney's Fees
- c. Such other and further relief, general or special, at law or in equity, to which the Court finds Plaintiff justly entitled.

Respectfully submitted,

THE LAW OFFICES OF A. CRAIG EILAND

By:  _____
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ATTORNEY FOR PLAINTIFF

Galveston County - 122nd District Court
CIVIL CASE INFORMATION SHEET

Filed: 4/23/2015 11:52:08 AM
 JOHN D. KINARD - District Clerk
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CAUSE NUMBER (FOR CLERK USE ONLY): 15-CV-0405

COURT (FOR CLERK USE ONLY):

STYLED Linda Grayson v. Lexington Insurance Co.

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: <u>Craig Eiland</u> Email: <u>ceiland@eilandlaw.com</u> Address: <u>2211 The Strand, Ste 201</u> City/State/Zip: <u>Galveston, TX, 77550</u> Signature: <u>[Signature]</u> Telephone: <u>409-763-3260</u> Fax: <u>713-513-5211</u> State Bar No: <u>06502380</u>		Plaintiff(s)/Petitioner(s): <u>Linda Grayson</u> Defendant(s)/Respondent(s): <u>Lexington Insurance Co.</u> [Attach additional page as necessary to list all parties]		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: _____ Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input checked="" type="checkbox"/> Consumer/DTPA <input checked="" type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____		Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____		Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	
Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children		Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order		Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	
Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____		Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____	
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input checked="" type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					